Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES
FOR THE OCTOBER 1995 TERM

John L. Dean,
Petitioner in Proper Person
vs .
Trans World Airlines, Incorporated,
and the
Air Line Pilots Association, International,
Defendants

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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54 pp

QUESTIONS PRESENTED FOR REVIEW

1. Does a conflict between a District Court of the Ninth Circuit and a Bankruptcy Court of the Third Circuit over the issue of jurisdiction of an action at law against a Debtor and that Debtor's joint tort feasor that preceded the Debtor's filing for Chapter 11 bankruptcy constitute an issue of importance to be reviewed by this Court?

2. Does a Bankruptcy Court have exclusive jurisdiction over an action at law against a Debtor and that Debtor's joint tort feasor after the Debtor files for Chapter 11 bankruptcy protection and the automatic stay of 11 U.S.C. §362(a) is in full force and effect?

3. Does a District Court have any jurisdiction, authority, or discretion to consider any of the merits of an action once the Bankruptcy Court of another judicial district has issued its protective order in favor of a Debtor who is a defendant in that action?

4. What recourse and remedy in law or equity had this Court provided for the aggrieved Plaintiff in this action, and Claimant in the bankruptcy action, to resolve the jurisdictional dispute that existed between the District Court and the Bankruptcy Court?

5. In what Circuit and in what Court must the parties to such an action seek relief from the automatic stay?

6. Either considering or regardless of the answers to questions 2, 3, and 5 above, did the Ninth Circuit District Court judge act outside of its jurisdiction and authority and abuse its discretion when it proceeded to act upon the merits of the action and issue orders and judgments affecting all parties to the action, long before the Third Circuit Bankruptcy Court judge had considered any jurisdictional issue or

merits thereof and released the action for litigation outside of the Bankruptcy Court?

7. Did the Ninth Circuit Court of Appeals have the jurisdiction and authority to consider and fashion a remedy for the Plaintiff's jurisdictional appeal concerning the District Court judge's actions taken after the imposition of the automatic stay to issue so-called final judgments in flagrant violations of the rules of law?

8. Did the Ninth Circuit Court of Appeals have the jurisdiction and authority to consider anything other than the jurisdictional issues before it when it failed to address those jurisdictional issues and proceeded to consider the merits of the District Court's actions that were and are at variance and in conflict with the Bankruptcy Court's orders, the Third Circuit's law, the Ninth Circuit's law, and the law of the case as published by the Ninth Circuit in 1991. Or alternatively, did the Ninth Circuit have the jurisdiction, authority, and discretion to disregard its own precedent case law and law of the case, as well as the Bankruptcy Court's orders, and do anything other than remand the action back to the District Court at the status quo that existed prior to the imposition of the automatic stay and declare all orders and judgments issued by the District Court after the imposition of the automatic stay null and void from inception and of no force in law or equity.

9. Does this Court's authority over the inferior courts actions and inactions sought to be reviewed include the discretion to disregard the jurisdictional violations of these inferior courts?

LIST OF PARENT COMPANIES

At the time the original 1978 complaint was filed, Defendant Trans World Airlines, Incorporated, was a Delaware corporation originally founded by Howard H. Hughes. During the course of the proceedings TWA's stockholders reorganized the original corporation into a new holding company, Trans World Corporation, a Delaware corporation, under which all of the legal entities owned by the original TWA were made subsidiaries of the holding company, and a new entity also named Trans World Airlines, Incorporated, a Delaware corporation, was formed as a subsidiary of Trans World Corporation, and this new TWA was later spun off and purchased by Carl A. Icahn, under whose expertise was managed into Chapter 11 bankruptcy in January 1992. The new TWA is the remnant of the airline operation division of the old TWA. Trans World Corporation, the holder of the wealth of the old TWA, sold off most of its holdings, deincorporated, and split the wealth among the organizers of this corporate coup.

The Air Line Pilots Association, International, is a private labor union affilliated with the American Federation of Labor/ Congress of Industrial Organizations. To this day, the AFL/CIO is still engaged in partisan political activity using dues and fees to pay for these activities in seeming violation of United States Labor laws.

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CITATIONS OF OPINIONS, ORDERS, AND JUDGMENTS

Published Opinions of the Court of Appeals of the United States for the Ninth Circuit In Re C78-439, *John L. Dean vs. Trans World Airlines, Incorporated, and the Air line Pilots Association, International* ("Dean", "TWA", & "ALPA"):

708 F.2d 486 (9th Cir. 1983)

893 F.2d 1123 (9th Cir. 1990)

924 F.2d 805 (9th Cir. 1991)

72 F.3d 754 (9th Cir. 1995)

Orders issued by the United States Bankruptcy Court for the District of Delaware In Re 92-115, *In Re Trans World Airlines, Inc., Debtor,* applicable to C78-439, *Dean vs. TWA & ALPA:*

92-115, Order of Relief (Voluntary Petition), 31 January 1992

92-115, Order Modifying the Permanent Injunction to Allow Prosecution of Action Relating to Unsecured Claim, 26 July 1994

92-115, Order Relating to Motions by John L. Dean, 26 January 1995

Judgments issued by the District Court of the United States for the Western District of Washington In Re C78-439, *Dean vs. TWA&ALPA:*

C78-439R, Judgment, 4 February 1992

C78-439R, Judgment, 7 April 1992

C78-439R, Supplemental Judgment, 18 May 1992

BASES FOR JURISDICTION IN THIS COURT

This Court has Constitutional and Congressional jurisdiction to consider this Petition pursuant to Article 3 Sections 1 and 2 of the Constitution for the United States of America and 28 USC §§1254(1) and 1651 to review judgments of inferior courts.

The latest Opinion published by the Ninth Circuit Court of Appeals in this action at law upon which a Writ of Certiorari is sought was filed on 19 December 1995, and the motion for rehearing on same was denied on 31 January 1996. An Application for Stay of Mandate, A-737, was denied by Justice O'Conner without comment on 5 March 1996. Previous Opinions published by the Ninth Circuit Court of Appeals in this action have been listed on page 1 for this Court's information.

Orders of the United States Bankruptcy Court for the District of Delaware applicable to this action have also been listed on page 1 for this Court's review, along with the three null and void judgments issued by the District Court of the United States for the Western District of Washington after that court had lost its jurisdiction pursuant to the authority of 28 USC §1334 when Defendant Trans World Airlines, Inc., ("TWA") filed for Chapter 11 bankruptcy protection, and which null and void judgments were the bases for the premature appeals to the Ninth Circuit Court of Appeals to challenge the District Court's userpation of the Bankruptcy Court's exclusive jurisdiction pursuant to 28 USC §§157 and 1334(e) that had transfered jurisdiction to the District of Delaware from the Western District of Washington.

APPLICABLE CONSTITUTIONAL AND STATUTORY PROVISIONS

Although the Petitioner's underlying action at law avered the violations of his unalienable rights guaranteed in the Bill of Rights and the violations of his recourse under Title 1 of the Railway Labor Act by the Defendants, as well as the violation of the Railway Labor Act by the Defendants in causing his unlawful discharge in violation of Section 3-B of the Pilots Working Agreement ("TWA-ALPA contract") and other applicable sections thereof, this Petition is primarily concerned with the issues of the jurisdiction, or lack thereof, of the District Court judge in proceeding to issue numberous "orders" and "judgments" after Defendant TWA had filed for Chapter 11 bankruptcy in the District of Delaware and the Bankruptcy Court had issued its Order of Relief instituting the automatic stay provided by Congress in 11 USC §362(a). The various applicable statutes in Titles 11 and 28, as well as the various applicable Bankruptcy Court Rules and Federal Rules of Civil Procedure concerning the jurisdictional issues presented have already been listed in the Table of Authorities. If this Court decides to expand its review pursuant to 28 USC §2106, the Petitioner will provide any additional material that may be required by Rule 14.1(i)(v) upon request

PETITION FOR WRIT OF CERTIORARI

BRIEF HISTORY OF THE CASE

The underlying action at law, C78-439, *John L. Dean vs. Trans World Airlines, Incorporated & Air Lines Pilot Association, International* ("Dean", "TWA" & "ALPA"), originated in a dispute between Dean and ALPA over the validity of Section 3-B of the TWA-ALPA contract and the resulting ALPA "service charge" levied upon Dean, a non-union member pilot, by ALPA equal to ALPA's union dues levied upon its union members covered by the TWA-ALPA contract beginning January 1975. After Dean had pursued a year and a half of administrative recourse against ALPA to obtain an accounting of the charges that this Court had, prior to that time, held could be levied against non-union members by unions operating under the Railway Labor Act, Title 1, 45 USC §§151-158, 181-188, ALPA summarily directed TWA to discharge Dean without having given Dean the necessary and proper recourse or notification required by law and the TWA-ALPA contract; and TWA proceeded to do so without giving Dean the proper recourse under the law and the appropriate contract provisions. After Dean's unlawful discharge his lawyers sought administrative remedies with TWA's and ALPA's lawyers for over six months to no avail, and in mid 1978 the presently ongoing suit was filed in the District Court of the United States for the Western District of Washington at Seattle.

After over three years of costly delays by TWA and ALPA lawyers, as well as by the District Court, a partial summary judgment was issued

ordering Dean to pay ALPA the disputed charges (that had been characterized as unconstitutional taxes), chastizing ALPA for their lawyers' failure to recognize their duties to Dean under the Railway Labor Act, and ordering TWA to reinstate Dean to the status that he held prior to his unlawful discharge. Both TWA and ALPA refused to abide by the partial summary judgment, and a permanent injunction was issued against both Defendants to enforce the judgment. Dean was reinstated in May of 1982 and retrained in the B-707, one of the two aircraft he was proficient in at the time of his discharge in 1977; but he was not retrained in the L-1011 nor paid at the L-1011 level as his seniority allowed in accordance with the contract. Both TWA and ALPA filed an interlocutory appeal, and in June of 1983 the Ninth Circuit Court of Appeals issued its first Opinion ("Opinion 1"), *Dean vs. TWA & ALPA*, 708 F.2d 486 (9th Cir. 1983) overturning the permanent injunction and whatever else any judge might read into it. In the meantime Dean had again been discharged by TWA for failing to report to fight duty while on a leave of absence that had been denied after Dean had taken his leave and TWA's finance department had placed him on leave status[1]. Dean filed a grievance with ALPA who filed it against TWA, who then had a change of heart and proposed a meeting to reinstate Dean. The meeting was scheduled for June 1982, but once Opinion 1 was published neither TWA nor ALPA responded to any of Dean's counsel's attempts to address the grievance[2].

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[1] In 1982 TWA had notified its cockpit and cabin crews that leaves of absence of 90 days up to two years would be granted to anyone to relieve its over-staffing problem and to avoid involuntary layoffs. Dean was the only pilot to have his leave so denied and be discharged.

Upon remand TWA and ALPA sought additional costly discovery and TWA sought and obtained an order separating all action against TWA after the date of Dean's reinstatement from the present litigation (even though the Ninth Circuit's Opinion 1 overturned the reinstatement), and leaving Dean's 1982 grievance against TWA in limbo, among other things. A trial was scheduled for mid-1985 before the original presiding judge, who had ordered ALPA to justify its service charges or lose the suit by default. However, prior to the trial the senior partner of Dean's counsel attempted to renegotiate the firm's hourly agreement and extort over fourty thousand dollars from Dean or withdraw from the case. After Dean presented the situation to the judge, he dropped the case like a hot potato and reassigned it to a newly appointed judge, who overturned the original judges orders and granted summary judgments to TWA and ALPA and left only the limited issue of notice by ALPA to Dean as the triable issue. This single issue of fact and resulting damages was then tried before a chain jury, over Dean's objections, and issued on a TWA manufactured form that held ALPA liable for not giving Dean proper notice and absolved TWA from any liability for ALPA's failure to give Dean proper notice[3]. All parties to

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[2]Although ALPA represented Dean when the injunction against TWA and ALPA was in effect, after Opinion 1 was published, ALPA ceased to represent him in the grievance until ALPA's Petition for Rehearing of Opinion 3 was denied, at which time ALPA again appeared as Dean's representative. At present, ALPA does not seeem to be actively pursuing the greivance.

[3] By mis-reading this verdict form and Opinion 3, the latest District Court Judge held as a matter of "case law" that TWA was not liable to Dean for his unlawful discharge or for TWA's violations of the Railway Labor Act, the TWA-ALPA contract, and Dean's First Amendment rights.

the action appealed, and after four and a half years after the trial the Ninth Circuit issued its whacky 1990 Opinion ("Opinion 2"), *Dean vs. TWA & ALPA*, 893 F.2d 1123 (9th Cir. 1990) (written by the same judge who wrote Opinion 1), that addressed only ALPA's appeal and overturned the chain jury's award. Since the Ninth Circuit failed to address Dean's appeal, and since the Ninth Circuit's legal reasoning was contrary to precedent opinions by this Court, Dean petitioned the Court for a rehearing. The Ninth Circuit granted a rehearing and ordered a rebriefing as well as a rehearing, and in January 1991 issued a more definitive Opinion ("Opinion 3"), *Dean vs. TWA & ALPA*, 924 F.2d 805 (9th Cir. 1991), written by three sets of law clerks, in a less than seedless manner, for the chief judge. This Opinion overturned and de-published Opinion 2 and superseded Opinion 1 and overturned all of the summary judgments and orders issued by the trial judge and the chain jury's verdict and award, seemingly reinstated Dean's reinstatement in 1982, established the legal precedents concerning the liability of TWA and ALPA to Dean under the Railway Labor Act and Ammendment Article 1 as avered in the Amended Complaint, and remanded the action back to the District Court for a trial on the damages of Dean's First Amendment and contract violation claims that had not been addressed at the first trial, and upheld TWA's claim that TWA was not liable for ALPA's failure to properly notify Dean under the provisions of the contract applicable to ALPA, among other points of appealate law. TWA was not absolved of liability for its violations of the Railway Labor Act or the TWA-ALPA contract in Dean's unlawful discharge in 1977, as TWA's lawyers have so claimed, and as the latest District Court Judge assumes[4]. ALPA's lawyers filed a petition for a

rehearing that was denied, and the action was remanded in June 1991, at which time a third judge was assigned to the case.

The third judge opened the case to more discovery and motions for summary judgment and ordered mediation, that was doomed to failure by TWA's in-house lawyer not having the authority to negotiate any settlement pending TWA's pending bankruptcy that was known to all parties to the action. After the Ninth Circuit had issued its Opinion 3, the National Right to Work Legal Defense Foundation, that had silently backed Dean's second appeal, contracted with Dean to finance and represent him at the trial; but when the Foundation lawyer learned of TWA's coming bankruptcy, he attempted to back out of his contract and take local counsel with him (since the Foundation was picking up the tab), a threat he made good when a conflicting case before this Court demanded most of his time. After Dean's lawyers moved to withdraw in November 1991 all chances for settlement were wiped out and TWA filed for Chapter 11 bankruptcy on 31 January 1992. TWA's counsel notified the Court of TWA's bankruptcy filing on 3 February 1992 and withdrew as counsel at that time[5]. On 4 February 1992 the judge issued a multi-page order granting and denying motions for summary judgments "settling" all issues before her including Dean's lawyers' motion to allow them to withdraw from the action and leaving Dean without any effective counsel to oppose her null and void order

[4] Although according to the case law established in Opinion 3 that one appealate panel cannot unilatteraly overturn another panel, the panel issuing Opinion 4 has attempted to uphold the District Court Judge's mis-reading of the chain jury verdict and Opinion 3 and thus effectively overturn parts of Opinion 3.

[5] The District Court Judge should have been aware of TWA's pending bankruptcy when Dean's counsel filed for leave to withdraw.

and original "final judgment". Dean then appeared in proper person contesting her actions subsequent to the transfer of all exclusive jurisdiction to the Bankruptcy Court in Delaware. After several months of pleading to have the judge's jurisdictionless actions overturned and the case stayed pending the bankruptcy proceedings, to no avail, Dean appealed to the Ninth Circuit where he was able to obtain a stay of the appeal, but not of the Court's resulting "orders" and "judgments".

In the meantime Dean filed two claims with the Bankruptcy Court; one regarding the C78-439 case, and the other in regards to his 1982 grievance, that ALPA had agreed to appear and prosicute after the Ninth Circuit declined to rehear its Opinion 3. In addition, as a direct result of the summary judgment issued in favor of ALPA to reinstate the chain jury award against ALPA in lieu of a trial for damages on the remanded issues, ALPA placed the award due Dean in the Disrtict Court's Registry and filed an additional suit against Dean that the presiding judge assigned to herself and proceeded to litigate a claim on the award[6]. Meanwhile over two years passed before the Bankruptcy Court scheduled a hearing into Dean's claim against TWA in this action, and then only after TWA's lawyers moved for same. In July of 1994 the Bankruptcy Court issued an order releasing this action from the provisions of the permanent injunction, and which order Dean moved to have expanded to include the 1982 grievance action that TWA had

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[6]This action was likewise appealed to the Ninth Circuit Court of Appeals, where no stay of proceedings was granted; and despite the fact that there was not yet any final judgment from the first appeal upon which the second case could be based, the Ninth Circuit upheld the District Court's actions. Justice O'Connor denied a stay of that action without comment.

refused to schedule for hearing. After another hearing in December 1994, that ALPA's lawyer assigned to prosecute the grievance declined to attend, the Bankruptcy Court issued another order in January 1995 releasing both of his claims for litigation outside of the Bankruptcy Court and reaffirming its jurisdiction over this action as of 31 January 1992 and stating that all actions taken by the Distrcit Court after 31 January 1992 would be void under third Circuit law.

After the Bankruptcy Court had issued its final order, Dean moved the Ninth Circuit Court of Appeals to remand the action back to the District Court at the status quo existing prior to 31 January 1992 in accordance with case law of both the Third and Ninth Circuits; and following the denial of that motion the appeal was briefed and an oral hearing held in October 1995. On 19 December 1995 the latest Opinion was filed and published, *Dean vs. TWA & ALPA*, 72 F.3d 754 (9th Cir. 1995) ("Opinion 4"). Shortly thereafter Dean filed a motion for a rehearing that was denied on 31 January 1996. The Ninth Circuit also denied a motion to stay the Mandate, and on 5 March 1996 Justice O'Conner denied Dean's Application for Stay of Mandate, A-737. Dean timely filed his Petition of Writ Certiorari on 26 April 1996; and by 2 May 1996 letter from Clerk William S. Sutter was granted a sixty day extention to comply with Rule 33.1.

JURISDICTIONAL ISSUES ON REVIEW

A. Question 1:

The nine questions presented for review all involve several jurisdictional issues that arose when Defendant TWA filed for Chapter 11 bankruptcy protection on 31 January 1992, and the chief judge of the District Court, acting as the presiding judge, chose to ignore the Bankruptcy Court's Order of Relief and resulting automatic stay and proceeded to issue a lengthy order disposing of all outstanding motions that were before the Court in an attempt to dispose of the complicated and troublesome case before her, the facts and law of which she did not understand. Further, the judge stripped Dean of his unfaithful counsel in an attempt to preclude their challenging the judge's actions and to prevent Dean from seeking further recourse under the law. Although the several "orders" and "judgments" issued by the District Court allegedly adjudicated all of the facts and law at issue, the merits of which still need to be addressed because of their conflict with previously established facts and law, the merits of the case need not be reached at this time unless this Court decides to expand its review beyond the jurisdictional issues pursuant to 28 USC §2106. The outrageous usurpation of jurisdiction and abuse of discretion by the District Court judge in this conflict of Circuits and the failure of the Ninth Circuit Court of Appeals to address these issues constitute substantive violations of procedural due process by these inferior courts and constitute reason for this Court to honestly consider this Petition and grant a Writ of certiorari.

B. Question 2:

Although the original District Court had original jurisdiction in this action pursuant to 28 USC §1331 under the Railway Labor Act and Amendment Article 1, all exclusive jurisdiction over the action was transferred to the Delaware District Court's Bankruptcy Court pursuant to 28 USC §§1334 and 157, and the original District Court was stayed from considering or proceeding with any further action by 11 USC §362(a) until such time as the stay was modified or lifted by the Bankruptcy Court. The Ninth Circuit's most recent Opinion holds this to be true for TWA, but it does not address its applicability to ALPA, as it should have done, since §157(c)(1) makes it quite clear that the Bankruptcy Court may hear an action related to an action under Title 11; and Dean's action against ALPA is most certainly related to his action against TWA, as the Ninth Circuit has already held in its precedent Opinion 3[7]. This Court should note that neither of these two sections under Title 28 provides for the instant case where the District Court is in a different Circuit than the Bankruptcy Court, nor does §158 thereof provide for such case; and thus this Court is the only Court available to resolve this dilemma.

C. Question 3:

Although this question may seem to be the flip side of the above Question 2, it does directly address the usurpation of the Bankruptcy Court's jurisdiction by the renegade District Court judge, as well as the

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[7] Both Bankruptcy Court orders also hold that Dean's claims are core issues; *i.e.* claims agaist the estate. The Ninth Circuit panel ignored this fact in its Opinion 4.

lack of authority and abuse of discretion by that outlaw judge to be considered in Question 5. Again, the Ninth Circuit's recent Opinion holds that the District Court lacked the jurisdiction and authority to address any merits of the case in regards to the Debtor TWA, but its Opinion does not address the District Court's remaining jurisdiction, if any, applicable to Defendant ALPA. Instead the Ninth Circuit author "affirms the other portions of the district court's judgment" by foot note 1 dicta appended to a statement regarding the District Court's erroneous reading of Opinion 3 regarding TWA's liability to Dean. Nowhere does the Ninth Circuit even address the question of whether or not the Court could issue any final appealable order and judgment in regards to ALPA absent the Court's jurisdiction in regards to TWA and without consent of all the parties seemingly required by 28 USC §§157(c) and 158 as well as FRCP 54(b). This Court should take judicial notice that **no** FRCP 54(b) judgment was ever requested by ALPA or granted by the District Court upon which an appeal might have been taken for the Ninth Circuit to consider. Further, this Court should note that §158 does not provide for any appeal procedure where the District Court is in a different Circuit than the Bankruptcy Court, and this Court has not yet prescribed any rules for this type of appeal pursuant to 28 USC §2072.

D. Question 4:

Although Congress has delegated to this Court the authority to prescribe rules that may define when a district court ruling is final for appeal under 28 USC §1291 in 28 USC 2072(c), this Court has not yet prescribed any such additions to FRCP 54(b) and (c) or FRAP 1, 3, or

4 to provide recourse to people like Dean when an outlaw district court judge such as Barbara J. Rothstein userps jurisdiction and authority and disregards the rules of law. It also seems that this Court has failed to properly supervise the Ninth Circuit as provided for in 28 USC §42. For these reasons alone this Court should consider and act upon this Petition-and grant a Writ of Certiorari.

E. Question 5:

It appears from the provisions of 28 USC §157(b)(5) and 11 USC §362(d) that any party to an action in which the jurisdiction has been transfered pursuant to 28 USC §1334 must seek recourse in either the Bankruptcy Court or the District Court in the judicial District in which the Bankruptcy Court is located. In this action that district is the District of Delaware, and **not** the Western District of Washington. Before the offending District Court judge could act upon any matter the parties would have had to seek relief from the automatic stay from the Bankruptcy Court and seek a change of venue back to the Western District of Washington from the District of Delaware, and any appeal from that District would have to be in the Third Circuit Court of Appeals pursuant to the provisions of 28 USC §158. ALPA never sought relief of any type from the Bankruptcy Court; while Dean sought relief shortly after filing his claim by proceeding in accordance with 11 USC §1109(b) and BR 2018(a) and 7024, and TWA waited over two years to seek the modification of the injunction that had succeeded the automatic stay and allow Dean to be heard. No party appealed the Bankruptcy Court's final order issued on 26 January 1995, that allowed the prosecution of *Dean vs. TWA & ALPA*, C78-439, in the Western District of Washington

and the Ninth Circuit and that held under Third Circuit law that **any action** taken by the District Court after the imposition of the automatic stay would be void.

F. Question 6:

If this Court gives any credence whatsoever to the doctrine of *noscitur a sociis* it would appear that jurisdictional statutes 28 USC §§157 and 1334 most certainly apply to **all** parties to an action existing prior to the commencement of a bankruptcy action involving one of the parties, as does 11 USC §362(a). Even the Ninth Circuit in *Wong Kam Wo vs. Dulles*, 236 F.2d 622, 626 (1956), stated that: "(T)he meaning of doubtful words in a statute may be determined by reference to their association with other words and phrases."

Because of references to TWA's impending bankruptcy in pleadings before her, and because TWA's lawyers filed a Notice of the Order of Relief with the District Court and then withdrew as counsel, the District Court judge, Barbara J. Rothstein, knew, or should have known, that TWA had filed for Chapter 11 bankruptcy protection with the Delaware District Bankruptcy Court and that she had lost jurisdiction over all of the parties to the action as well as to the action itself. When she proceeded to issue FRCP 56 summary judgments after the automatic stay was in full force and effect she knew, or should have known, that she was willfully exceeding her authority and trespassing upon Dean's lawsuit and interfering with his rights to substantive due process of law and recourse to justice. All of her actions are a matter of public record, and it would appear from the District Court records and the Bankruptcy Court records that Barbara J. Rothstein willfull acted

without jurisdiction or authority to issue any orders or summary judgments. According to Ninth Circuit law, "A courts lacks discretion to apply the law improperly". *Wright vs. Rushen*, 642 F.2d 1129, 1132 (1981). In the Federal Circuit, in *Hayworth vs. Steelcase*, 12 F.3d 1093, 1097 (1993), that court held that:

> "An abuse of discretion exists where the court's decision relies on clearly erroneous findings of fact, ... improperly applies the law or uses an erroneous legal standard, ... or is simply arbitrary and unjustifiable in view of the circumstances." (Citations omitted).

In an *en banc* decision of the Third Circuit citing from two 1975 and 1976 Supreme Court decisions, that Circuit stated in *Evans vs. Buchanen Et Al*, 555 F.2d 373, 378 (1977):

> "The Supreme Court teaches that this exercise of discretion involves certain functional parameters: [D]iscretion imparts not the court's 'inclination, but ... its judgment; and its judgment is to be guided by sound legal principles.' Discretion is vested not for purposes of 'limit[ing] appellate review of trial courts, or ... invit[ing] inconsistency and caprice,' but rather to allow the most complete achievement of the objectives ... attainable under the facts and circumstances of the specific case."

In an interesting Tenth Circuit mandamus action, *Daiflon vs. Bohanen*, 612 F.2d 1249, 1253-1258 (1979), that court stated:

> "If it is found that there is a disregard for proper procedure, or misuse of judicial power ..., this would constitute a clear abuse of discretion."

Although no circuit appears to have set a legal standard for manifest disregard of the law by Article 3 judges (or Article 1 and Article 2 "judges") the Second Circuit has set a standard for arbitrators, who are held to a lower standard than judges, in *Merril Lynch, Pierce, Fenner & Smith vs. Bobker*, 808 F.2d 930 ,933 (1986), where that Court stated:

> "(T)he term 'disregard' implies that the arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore or pay no attention to it."

The Ninth Circuit stated in 1961 in *San Martine Compania de Nav vs. Saguenay Term. Ltd.*, 293 F.2d 796, 801, that manifest disregard of the law "might be present when arbitrators understand and correctly state the law, but proceed to disregard the same". Despite the less than truthful statement in Opinion 4 that "The parties tell us that the court was not aware of the bankruptcy filing when it issued its order", the Court should have been aware of the Notice of Automatic Stay filed on 3 February 1992 by TWA's counsel, one day prior to the filing of the suspect order[8].

G. Question 7:

Dean actually filed three notices of appeal in this action, the first two of which were fashioned as premature appeals to alert the Ninth Circuit of the jurisdictional problem and protect his appeal rights. Had the District Court processed the original appeal when it was filed, the Ninth Circuit would have reviewed it as an interlocutory appeal under 28 USC §1292(b) and considered the first "final judgment" as a void judgment issued after the District Court lost its jurisdiction under 28 USC §1334. According to an earlier Ninth Circuit ruling, *Watts vs. Pickney*, 752 F.2d 406 (1985), it is clear that the Ninth Circuit has claimed an inherent jurisdiction to consider void judgments of district courts wanting subject matter jurisdiction, stating at 409:

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[8]TWA's intention to seek Chapter 11 bankruptcy protection was a matter of public record for several months prior to the actual filing.

> "It is well settled that a judgment is void if the court that considered it lacked jurisdiction of the subject matter, or if ... (the court) acted in a manner inconsistent with due process of law ...."

The controlling Ninth Circuit precedent law concerning the automatic stay provisions of 11 USC §362(a) at the time the action was appealed was *Treasurer of Snohomish Cty. vs. Seattle First National Bank (In Re Glasply Marine Industries)*, 971 F.2d 391 (1992); and under that case there were no exceptions to 11 USC §362(a) that might have allowed the District Court some jurisdiction. Further, at that time this Court had not yet amended FRAP 4(a)(4), and there was some question whether or not any appeal under 28 USC §1291 existed, given the purpose of FRAP 1(b) and the effects of 28 USC §1334 upon the action, the District Court, and the Ninth Circuit. However, given that the Ninth Circuit had claimed in *Watts vs. Pickney* that it had inherent jurisdiction to consider void judgments, it could have used that inherent jurisdiction to consider the appeal at that time and set aside all of the District Court's "orders" and "judgments" that were issued after the automatic stay was in full force and effect. At that time the controlling law in *Watts vs. Pickney*, as stated at page 410 was:

> "A court considering a motion to vacate a judgment, which it finds void for lack of jurisdiction, has no discretion to hold that the judgment should not be set aside."

It appears that the Ninth Circuit could have considered the jurisdictional issues at that time.

H. Question 8:

By the time the Bankruptcy Court had issued its January 1995 order releasing this action for further litigation, the controlling Ninth

Circuit precedent case law involving the automatic stay was *Hillis Motors, Inc. vs. Hawaii Automobile Dealers Association,* 997 F.2d 581 (1993), where at pages 585, 586, 590, and 594, the Ninth Circuit dealt with the provisions of the estate established by bankruptcy action, the automatic stay provisions, the freezing of all of the parties at the status quo that existed prior to the imposition of the automatic stay, and the fact that alien court orders issued after the imposition of the automatic stay were null and void from inception, not merely voidable, citing from previous Ninth Circuit cases, other circuits, and this Court as authority. During the December 1994 hearing before the Bankruptcy Court the presiding judge stated that the existing Third Circuit law in regards to the District Court's post stay actions was the same as in the Ninth Circuit; and the resulting January 1995 order specifically stated that under Third Circuit law "(A)ny action taken by the (District Court) ... would be void.". Once the Bankruptcy Court's final order had been issued, Dean filed a Notice of Withdrawal of Appeals with the District Court withdrawing the three premature Notices of Appeal as nullities save for the issue of userpation of jurisdiction by the District Court judge; and Dean's briefs and oral argument concerned these issues and no merits of the case. As anyone can readily see, the Ninth Circuit's Opinion 4 ignores Dean's jurisdiction challenges and issues and declares that the District Court had jurisdiction under 28 USC §1331 and that the Ninth Circuit had jurisdiction under 28 USC §1291, without ever addressing Dean's challenge to jurisdiction or considering the Bankruptcy Court's orders and facts and conclusions of law contained therein. Further, Opinion 4 contains no references whatsoever to the *Hillis Motors* precedent case law; and this despite the fact that the author

of that treatise was a member of the panel that heard the oral argument. Instead, the entire Opinion was devoted to the subtrafuge issue in *I.U.F.A. vs. Pan American World Airways*, 966 F.2d 457 (9th Cir. 1991), proposed by TWA's local counsel, who had withdrawn from the case after giving notice to the District Court of the Order of Relief, and did not reappear until after the Bankruptcy Court issued its July 1994 order modifying the permanent injunction to allow prosicution of this action outside the bankruptcy forum. At no time during any of the Bankruptcy Court appearances did TWA's bankruptcy counsel or Trustee ever suggest that the District Court had any jurisdiction to consider this action, and it was TWA's motion and not Dean's several motions that the Bankruptcy Court granted in its July 1994 order. Note also that the Ninth Circuit upheld the District Court's actions regarding ALPA in foot note 1 of Opinion 4, quoting from *United States vs. Dos Cabezas*, 995 F.2d 1486, 1491 (9th Cir. 1993), by assuming erroneous alleged facts and circumstance not before the Court and that were at variance and in conflict with the findings of the Bankruptcy Court that specifically stated in its June 1994 order that it had jurisdiction pursuant to 28 USC §§157 and 1334 and that the case was a core proceeding pursuant to 28 USC §157(b)(2)[9]. At no time and in no order did the Bankruptcy Court separate any matter between any of the two Defendants TWA and ALPA. This Court must also note that the Ninth Circuit motions panel that granted the stay of the appeal stayed the actions against ALPA as well as TWA because of the automatic stay provisions. If the automatic stay had not applied to ALPA, then the Ninth Circuit could have considered an appeal concerning ALPA if

[9] *i.e.* The action was a claim against TWA's estate.

there had been an appealable FRCP 54(b) judgment that could have been appealed under 28 USC §1291, providing that this Court had provided a civil rule for such a circumstance pursuant to 28 USC §2072(c) or pursuant to 28 USC §1292(e). However, no such rule exists, and at the time this issue evolved FRAP 4 had not been modified. More importantly, since the Bankruptcy Court specifically stated that **any action** taken by the District Court after the imposition of the automatic stay **would be void** under Third Circuit law (and void *ab initio* under Ninth Circuit law), there were no orders and judgments, separate or otherwise, that the Ninth Circuit could consider except to set them aside. Also, even if there had been a lawfully issued FRCP 54(b) judgment concerning just ALPA, and, as now, the Ninth Circuit held that the judgment involving TWA was void as stated in Opinion 4, the Ninth Circuit would still have to consider the actions of the District Court judge stripping Dean of his counsel of record; and under the precedent case law in *Hillis Motors*, the Ninth Circuit would still have to restore Dean to his status prior to the imposition of the automatic stay and enforce the District Court's local rule GR 2(f)(3)[10]. Under the Ninth Circuit's prevailing case law that limits judges' discretion, the Ninth Circuit appeals judges are themselves limited. The Ninth Circuit panel that issued Opinion 4 did not have the discretion to mis-apply Ninth Circuit law, disregard Third Circuit law, disregard the Bankruptcy Court's findings of fact and conclusions of law, disregard or pervert the case law established in Opinion 3, and disregard this Court's

[10]A local rule that Barbara J. Rothstein authorized when she was the chief judge.

established case law and rules of law, as well as disregard clear statutes enacted by Congress[11]. For all of these reasons this Court must honestly consider this Petition and issue a Writ of Certiorari in this most important matter.

I. Question 9:

By this Court's unique power to write its own rules it has chosen through those rules to limit the citizens' unalienable rights to petition this government for redress of grievances by granting unto itself the discretion to decide what issues it will consider and what petitions it will summarily deny. Presumably errors and misapplications by government officials in the Judicial Branch of the United States government are not a cause in themselves for this Court to review errors in the system of inferior courts that this Court has authority to supervise in accordance with 28 USC §42. Since the errors in the inferior courts are caused by real live people invested with a title of office created by Congress, and which office is to be supervised by this Court's officers, either jointly or separately, it logically follows that this Court's officers have an obligation, a duty, not only to supervise, but to correct the inferior court's officers when they err in their duties and responsibilities, no matter how minor those errors and misapplications of correctly stated law may be. If inferior court officers do not have the discretion to misapply the law through willful ignorance or deliberate blindness, or just plain incompetence, by what statute or rule of law has this Court

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[11] See and take judicial notice of the Annotation by David A. Klein, J.D., *Unions - Uses of Dues or Fees*, 114 L.Ed 2d 783-807.

been granted any exemption from its official duties and only reason for existence? This Court should not disregard any jurisdictional violations or abuse of discretion by any inferior judge in this action, and this Court should hear this Petition and grant a Writ of Certiorari without any further delay.[12]

[12] On 17 June 1996, the Chief Judge of the District Court of the United States for the Western District of Washington, who was the presiding judge who bungled the case in 1985, recused Barbara Rothstein from any further involvement in this action.

CONSIDERATIONS FOR REVIEW ON CERTIORARI

I, John L. Dean, the aggrieved Plaintiff, Appellant, and the real live citizen Petitioner before this Court believe that there is good cause to hear this Petition and grant a Writ of Certiorari to the Ninth Circuit Court of Appeals and delve into the issue of the conflict of jurisdiction between the Ninth Circuit's District Court and the Third Circuit's Bankruptcy Court, as well as to review the failure of the Ninth Circuit to address the issue of jurisdiction and abuse of discretion that I have presented to it. Although these issues are issues that may be presented in accordance with Supreme Court Rule 10, I realize that this Court is more interested in politically sensitive issues than mundane issues of law. However, in this instant case some of the problems that need to be addressed were caused by this Court's failure to properly supervise the Ninth Circuit's political appointees as well as its failure to timely propose changes in the Federal Rules of Civil Proceedure and the Federal Rules of Appellate Procedure that might have given the inferior courts some guidance and provided me with recourse to my dilemma. At issue also is the complete disregard of jurisdictional statutes enacted by Congress by the Ninth Circuit's inferior judges, although disregard of such law is not included in Rule 10 as a reason to grant certiorari. This Court denied certiorari in 1983 when most of the underlying Railway Labor Law issues and the contract between TWA and ALPA could have been reviewed along with other Labor Law cases being reviewed at that time, and I do not expect this Court to review all of the intricacies involved in the eighteen years of litigation that I have been forced to endure without receiving any relief in regard to any of the

basic issues in my Amended Complaint; although it certainly could in accordance with 28 USC §2106. However, I actually do expect this Court to peruse this Petition and issue a Writ of Certiorari because there obviously is something rotten in the Ninth Circuit that this Court should not tolerate. I have been denied my legal recourse and substantive due process of law for too long for this Court to ignore the abuses of due process of law, jurisdiction, and discretion[13], as well as the present willful disregard of legal process of the Third Circuit's Bankruptcy Court by both the District Court judge and the Ninth Circuit's judges who seem to subscribe to the same political agenda as Cecil Poole who wrote the erroneous Opinions 1 and 2[14]. This Court needs to review the actions of the Ninth Circuit to insure that its past interpretations of the Railway Labor Laws are enforced by the inferior courts and that substance of law cannot be denied to any citizen by the abuses of rules of law and judicial discretion. This Court also needs to review its own procedures to ensure that it will never again allow any of its inferior courts to act as the Ninth Circuit has been allowed to act without any apparent supervision or concern.

I also ask this Court to be tolerant of any shortcomings in in this Petition and consider that I have been denied the services of my lead counsel, who is familiar with this Court's procedures, by the actions of the District Court judge and the dicta of the Ninth Circuit judges.

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[13] See *Unites States vs. Salerno*, 481 U.S. 739, 746, 107 S.Ct. 2095 (1987)

[14] When sitting with the panel holding the 1990 oral rehearing Judge Poole blurted the question: "What would happen to the union movement in America if Dean were **allowed** to win".

SUBMISSION AND SERVICE

Respectfully submitted this 28 June 1996, in proper person by me, John L. Dean, without assistance of my counsel of record in the District Court. I shall certify by separate document that I have also served copies of this Petition upon the following counsel of record for Defendants TWA and ALPA:

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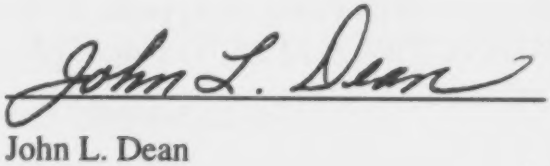

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APPENDIX

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN L. DEAN,	)	
Plaintiff-Appellant,	)	*Nos.* 92-35470
	)	92-35537
v.	)	
TRANS WORLD AIRLINES, INC.; AIR	)	D.C. No.
LINE PILOTS ASSOCIATION,	)	
INTERNATIONAL,	)	**OPINION**
Defendants-Appellees.	)	

Appeals from the United States District Court
for the Western District of Washington
Barbara J. Rothstein, District Judge, Presiding
Argued and Submitted
October 20, 1995—Seattle, Washington
Filed December 19, 1995
Before: Stephen Reinhardt and Stephen S. Trott, Circuit Judges, and William W Schwarzer, District Judge.*
Opinion by Judge Trott

SUMMARY

Bankruptcy/Automatic Stay

The court of appeals reversed in part a district court judgment, affirmed in part, and remanded. The court held that

*The Honorable William W Schwarzer, Senior United States District Judge for the Northem District of Califomia, sitting by designation.

where a decision to dismiss requires the court to first consider other issues presented by or related to the underlying case, dismissal of an action after the defendant has filed for bankruptcy violates the automatic stay.

Appellant John Dean sued appellees Trans World Airlines, Inc. (TWA) and the Air Line Pilots Association, International (ALPA) alleging contractual, statutory, and constitutional violations. After TWA filed for summary judgment on the issues of constitutional and statutory liability, TWA filed for bankruptcy. The district court issued an order that granted TWA's summary judgment motion and dismissed Dean's action against TWA because the law-of-the-case precluded finding TWA liable. The bankruptcy court later lifted TWA's automatic stay.

Dean appealed, contending that the district court violated the automatic stay provisions of 11 U.S.C. § 362(a) when it granted summary judgment to TWA and dismissed his action against TWA.

[1] The automatic stay prevents the continuation of an action against the debtor that was commenced before the commencement of the bankruptcy case. In the Ninth Circuit, post-filing dismissal of an action against a debtor is permissible so long as it is "consistent with the purpose of" § 362(a).

[2] In another case, the Ninth Circuit recognized that, under very limited circumstances, post-filing dismissal by a court of an action against a debtor may not be an impermissible "continuation" of a

proceeding. [3] However, a rule permitting post-filing dismissal based on a determination of issues presented by or related to an underlying case would be unworkable. [4] Thus, post-filing dismissal in favor of the bankrupt of an action that falls within the purview of the automatic stay violates the stay where the decision to dismiss first requires the court to consider other issues presented by or related to the underlying case. Because in this case dismissal of Dean's action against TWA required the court to decide whether the law-of-the-case precluded finding TWA liable to Dean, that dismissal violated the automatic stay.

COUNSEL

John L. Dean, Pro per, Olympia, Washington, for the plaintiff-appellant.

Ronald T. Schaps, Bogle & Gates, Seattle, Washington; Eugene B. Granof, Air Line Pilots Association, Herndon, Virginia, for the defendants-appellees.

OPINION

TROTT, Circuit Judge:

John L. Dean argues that the district court violated the automatic stay provisions of 11 U.S.C. §362(a) when the court granted summary judgment to Trans World Airlines (TWA) and dismissed Dean's action against it four days after TWA filed for bankruptcy. Dean's argument requires us to revisit the issue of when a court may dismiss an action

against a bankrupt defendant without violating the automatic stay. The trial court had jurisdiction under 28 U.S.C. § 1331. Jurisdiction over this timely appeal is proper under 28 U.S.C. § 1291. This appeal raises an issue of law subject to *de novo* review.

We conclude that where a decision to dismiss requires the court to first consider other issues presented by or related to the underlying case, dismissal of an action after the defendant has filed for bankruptcy violates the automatic stay. Accordingly, we reverse the summary judgment in favor of TWA and remand for further proceedings.

BACKGROUND

In 1979, Dean sued TWA and the Air Line Pilots Association (ALPA) for contractual, statutory, and constitutional violations related to TWA's decision to fire Dean at ALPA's behest. The case travelled a tortuous path and has visited the Ninth Circuit twice—in *Dean v. Trans World Airlines, Inc.*, 708 F.2d 486, 487 (9th Cir.), *cert. denied*, 464 U.S. 995 *(1983)(Dean I)*, and *Dean v. Trans World Airlines, Inc.*, 924 F.2d 805 (9th Cir. *1991)(Dean* II)—before reaching us this third time.

In *Dean II*, we affirmed a jury's verdict that TWA was not contractually liable and reversed the partial summary judgment in favor of the defendants on the constitutional claim. On remand, TWA filed for summary judgment on the issues of constitutional and statutory liability. The parties seem to have finished all substantive briefing by early January 1992.

On January 31, 1992, TWA filed for bankruptcy in Delaware.

On February 4, 1992, the district court issued an order that, among other things, granted TWA's summary judgment motion and dismissed Dean's action against it because the law-of-thecase precluded finding TWA liable.[1] The parties tell us that the court was not aware of the bankruptcy filing when it issued its order.

On July 26, 1994, the bankruptcy court lifted TWA's automatic stay.

DISCUSSION

[I] The automatic stay of 11 U.S.C. §362(a)(1) prevents the "commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement" of the bankruptcy case. The circuits do not agree on the circumstances under which post-filing dismissal of an action against a debtor is an impermissible continuation that violates the stay[2]. In the Ninth Circuit, such dismissal is permissible

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[1]We affirm the other portions of the district coun's judgment, in which the court reinstated a judgment against ALPA and allowed Dean's lawyers to withdraw from the case. Dean argues that these actions violated the stay. They did not. *United States v. Dos Cabezas Corp.*, 995 F.2d 1486, 1491 (9th Cir. 1993)("0rdinarily, . . . unless the assets of the bankrupt estate are at stake, the automatic stay does not extend to actions against parties other than the debtor, such as codebtors and sureties.")(citations omitted; listing authorities).

so long as it is "consistent with the purpose of the statute [11 U.S.C. § 362(a)]." *Independent Union of Flight Attendants v. Pan American World Airways, Inc.*, 966 F.2d 457, 459 (9th Cir. *1992)(IUFA).* Offering *IUFA* as authority, TWA asks us to affirm the district court's judgment.

Section 362(a) has two broad purposes. First, it provides debtors with protection against hungry creditors:

> It gives the debtor a breathing spell from its creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R.Rep. No. 595, 95th Cong., 1st Sess., at 340 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296-97. Second, the stay assures creditors that the debtor's other creditors are not racing to various courthouses to pursue independent remedies to drain the debtor's assets:

> The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in

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[2] *See Dennis v. A.H. Robins Co.*, 860 F.2d 871, 872 (8th Cir. 1988)(per curiam)(holding that stay does not prevent "another court from dismissing a case on its docket"). *But see Pope v. Manville Forest Prod. Corp.*, 778 F.2d 238, 239 (Sth Cir. 1985)(holding that district coun's post-petition dismissal of an action was a continuance that violated the stay).

preference to and to the detriment of other creditors.

Id.

[2] In light of these purposes, we recognized in *IUFA* that, under very limited circumstances, post-filing dismissal by a court of an action against a debtor may not be an impermissible "continuation" of a proceeding. 966 F.2d at 458. In *IUFA*, after losing an appeal to this court, the Independent Union of Flight Attendants (IUFA) petitioned for rehearing with a suggestion for rehearing *en banc*. We could not act on this petition because appellees Pan American World Airways, Inc., and Pan Am Corporation (collectively, Pan Am) had filed for bankruptcy, triggering the automatic stay. Instead, we asked for a status report. In response to our request, IUFA moved to dismiss its appeal for Hotness because it had withdrawn its grievance against Pan Am which had formed the basis for its appeal. IUFA's motion did not require us to resolve any issue related to the grievance. We reasoned that declining to dismiss would not serve the purposes behind the automatic stay. Judicial recognition that IUFA's claim was moot could neither intrude on Pan Am's "breathing space" nor give its other creditors any conceivable grounds for worry. Therefore, we dismissed IUFA's appeal notwithstanding the automatic stay. 966 F.2d at 458-59.

TWA reads *IUFA* broadly to mean that a post-filing dismissal of an action against a debtor does not violate the stay if the *effiect* of the dismissal is consistent with the purposes of the stay—i.e., if one can say in hindsight that dismissal helped the debtor and did not threaten

other creditors, then the ends excuse the means. A moment's reflection, however, shows that the *IUFA* exception must be a narrow one that cannot apply where a decision to dismiss requires a court to first decide any other issues presented by or related to the underlying case.

[3] Construing *IUFA* broadly to permit post-filing dismissal based on resolution of issues presented by or related to an underlying case would require us to impose an unworkable rule to avoid undermining the debtor protection purpose of the automatic stay. Before a court *decides* a question, the court does not know which side will win. Therefore, while a court actively *considers* an issue in a case against a debtor, the court cannot know whether its consideration will, in the end, help or harm the debtor. Suppose, as in this case, a defendant moves for summary judgment on law-of-the-case grounds before filing for bankruptcy. If the court grants this motion after the filing, then one could argue, in retrospect, that the court did not violate the purpose of debtor protection because it has lightened the debtor's litigation burden and protected the debtor's estate. If, however, the court denies the motion, then it has violated the debtor protection purpose and impermissibly continued the proceeding. A court must be able to know whether its consideration of a matter will violate the stay before it considers the matter, such as in *IUFA*, not after. A rule permitting postfiling dismissal based on a determination of issues presented by or related to an underlying case is unworkable because, in practice, it would require courts to know the answers to questions before deciding them. As we were reminded by Lewis Carroll, first the trial, then the verdict. Such a holding should surprise no one.

[4] Therefore, we hold that post-filing dismissal in favor of the bankrupt of an action that falls within the purview of the automatic stay violates the stay where the decision to dismiss first requires the court to consider other issues presented by or related to the underlying case. In other words, thinking about the issues violates the stay. Dismissal of Dean's action against TWA required the court to decide whether the law-ofthe-case precluded finding TWA liable to Dean. Therefore, this dismissal violated the automatic stay. By contrast, in *IUFA*, the motion to dismiss had nothing to do with the issues arising out of IUFA's grievance. It merely asked the court to recognize that IUFA no longer wished to litigate. Therefore, dismissal did not violate the automatic stay because, at the time of IUFA's motion, it was clear there was no conceivable way for the court's consideration of the motion to harm the bankrupt Pan Am.

CONCLUSION

We reverse the grant of summary judgment to TWA and the dismissal of Dean's action against it. We affirm the other portions of the district court's judgment and remand for proceedings consistent with this opinion. The parties will bear their own costs.

REVERSED IN PART, AFFIRMED IN PART, and REMANDED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN L. DEAN,	)	
	)	
Plaintiff-Appellant,	)	Nos. 92-35470, 92-35537
	)	
v.	)	D.C. No. CV-78-439 BJR
	)	
	)	
TRANS WORLD AIRLINES, INrC.;	)	
AIR LINE PILOTS ASSOCIATION,	)	
INTERNATIONAL,	)	ORDER
	)	
Defendants-Appellees	)	

Before: REINHARDT and TROTT, Circuit Judges, and SCHWARZER, District Judge.*

The panel has voted to deny the appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

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* The Honorable William W. Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

FORM 1 Voluntary Petition

United States Bankruptcy Court
District of Delaware

IN RE TRANS WORLD AIRLINES, INC. 100 South Bedford Road Mt. Kisco, NY 10549	92-115 VOLUNTARY PETITION

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ORDER OF RELIEF

U. S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

Original Copy Certified By
Carolyn C. Raniszewski, Clerk
U. S. Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re	)	
	)	Case No. 92-115
TRANS WORLD AIRLINES, INC.,	)	
	)	Chapter 11
Debtor.	)	

ORDER MODIFYING THE PERMANENT INJUNCTION TO ALLOW PROSECUTION OF ACTION RELATING TO UNSECURED CLAIM

THIS MATTER is before the Court on Trans World Airlines, Inc.'s ("TWA") Motion for Order Modifying the Permanent Injunction to Allow Prosecution of Action Relating to Unsecured Claim (the "Motion"). By the Motion, TWA seeks an order modifying the permanent injunction of Section 524(a)(2) and the Confirmation Order to allow the continued prosecution outside the Bankruptcy Court of a case originally styled as Dean v. Trans World Airlines and the Air Line Pilots Association, International, Case No. C78-439M (W.D. Wash.) (the "Dean Litigation"). The Court, having reviewed the Motion and the response of the claimant thereto, finds that (i) it has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the permanent injunction is hereby modified to allow John L. Dean to pursue the Dean Litigation in the Western District of Washington and the United States Court of Appeals for the Ninth Circuit; and (IV) after due deliberation, good and sufficient cause exists to grant the requested relief.

NOW, THEREFOR, it is hereby ORDERED that the permanent injunction is modified to allowed (*sic*) prosecution of Dean v. Trans World Airlines and the Air ine Pilots Association, International, Case No. C78-439M (W.D. Wash.3 and the appeal of that matter to the United States Court of Appeals for the Ninth Circuit.

Date: July 26, 1994

(S) Helen S. Balick
United States Bankruptcy Judge

CERTIFIED:
AS A TRUE COPY:
ATTEST:

CAROLYN C. RAWISZEWSXI, CLERK
U. S. BANKRUPTCY COURT

BY (S) Catherine Murphy
Deputy Clerk

(Aside added to this reproduction)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In The Matter Of	:	
	:	
TRANS WORLD AIRLINES, INC.,	:	Case No. 92-115
Debtor.	:	

ORDER RELATING TO MOTIONS BY JOHN L. DEAN

This Matter is before the court on motions by John L. Dean (Dean) (1) For Reconsideration And Modification Of This Court's July 26, 1994, Order Modifying The Permanent Injunction To Allow Prosecution Of Action Related To Unsecured Claim and (2) To Modify Automatic Stay for DeanTWA Grievance (the Motions). The court, having reviewed the Motions and the response of Trans World Airlines, Inc. (TWA) to them, having convened a hearing on December 21, 1994, with respect thereto at which the arguments of Dean and TWA were heard, and after due deliberation, finds for the reasons stated in open court on December 21, 1994,

AND, IT IS HEREBY ORDERED THAT:

1. As a result of this court's order of July 26, 1994, the permanent injunction of Section 524(a)(2) of the Bankruptcy Code and the Confirmation Order have been modified to allow prosecution of Dean v. Trans World Airlines and the Air Line Pilots Associations International, Case No. C78-439M (W.D. Wash.) (the Dean Litigation) and the 1982 grievance action involving Dean and Trans World Airlines.

2. The automatic stay imposed under 11 U.S.C. § 362(a)

dissolved upon confirmation of TWA's plan. 11 U.S.C. § 362(c) (2)(C). John Dean and TWA are free to arbitrate or otherwise prosecute the grievance by Dean against TWA presently pending before the System Board of Adjustment under the Railway labor Act pursuant to whatever schedule the Board deems appropriate.

3. Under the law of the Court of Appeals for the Third Circuit any action taken by the United States District Court for the Western District of Washington in the Dean Litigation after the petition was filed in this case on January 31, 1992, would be void.

4. All matters presently pending before this court involving John L. Dean are core proceedings and are resolved by this Order. (28 U.S.C. §157(b)(2)(A), (G), (L), (O)).

(S) Helen S. Balick
JUDGE

Dated: January 26, 1995

(Certification stamped on back of original copy)

Received
FEB 17 1995

Clerk U.S. District Court

AN ACTION AT LAW
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASHINGTON

JOHN L. DEAN,	)	
Plaintiff,	)	C78-439R
vs.	)	NOTICE OF
	)	WITHDRAWAL OF
	)	APPEALS
TRANS WORLD AIRLINES, INC.	)	
and the AIR LINE PILOTS	)	
ASSOCIATION, INT.,	)	NOTICE OF SERVICE
Defendants.	)	

NOTICE: TO THE CLERK OF THE COURT

1. I, John L. Dean, the aggrieved Plaintiff in this action at law, appearing in proper person under the authority of my 16 November 1991 Notice of Appearance entered as docket number 436 on 18 November 1991, hereby give **NOTICE** to this Court, and to all parties to this action, that all jurisdiction in this action was transfered to the Bankruptcy Court of the United States for the State of Delaware at 0538 PST by the authority of the Order of Relief issued by that Court in cause number **92-115,** In Re Debtor Trans World Airlines, Inc. (filed

on 3 February 1992 and entered as docket number 497) and 28 U.S.C. §§157 and 1334. See Exhibits **1** and **2**.

2. By orders issued on 26 July 1994 and 26 January 1995, the Bankruptcy Court modified and lifted the automatic stay of 11 U.S.C. §362(a) and the permanent injunction of 11 U.S.C. §524(a) to allow continued prosecution of this action in this Court. See Exhibits **2** and **3.**

3. Upon the transfer of all exclusive jurisdiction in this action to the Bankruptcy Court on 31 January 1992, all proceedings became core proceedings of that court pursuant to 11 U.S.C. §157, and any actions taken after that time are null and void ab initio, and the status of all parties to this action remained as the status quo on 30 January 1992. See and take **judicial notice** of Hillis Motors, Inc., vs. Hawaii Automobile Dealers' Association, 997 F.2d 581, 585, 586, 590, 591, 594 (9th Cir. 1993). See Exhibit 3.

4. In accordance with the law of both the Third and Ninth Circuits, all action taken by this Court subsequent to 30 January 1992, namely "orders" issued by acting "presiding judge" Barbara J. Rothstein and "judgments" issued by this Court's Clerk are not merely voidable, but void from inception, and as such are not appealable as to any merits of the case which were the exclusive jurisdiction of the Bankruptcy Court. These null and void "orders" and "judgments" are those entered under the following docket sheet numbers: 498, 499, 504, 507, 511, 523, 524, 538, 545, 546, 548, 562, 563, 565, 570, and 571. In addition to these null and void "orders" and "judgments" that were issued, entered, and mailed to all parties to this action in obvious and felonious violations of 18 U.S.C. §§1341 and 1346 and my common law rights

guaranteed me by the Bill of Rights, among other things, all other pleadings in this action would be void as a matter of law. Therefor, my three premature notices of appeal, one lodged on 20 April 1992 and entered without any docket number on 22 April 1992, and the two others entered under docket numbers 564 and 572, are hereby withdrawn as nullities save for an appeal from the issue of this Court's lawlessness and userpation of Bankruptcy Court's exclusive jurisdiction over all matters after the entry of the Bankruptcy Court's Order of Relief on 31 January 1992.

5. The resolution of all other matters resulting from the lawless actions of acting "presiding judge" Barbara J. Rothstein I leave to my counsel of record existing as the status quo prior to TWA's filing for Chapter 11 bankruptcy protection.

Submitted in proper person, without the assistance of my counsel of record this 17 February 1995.

(S)
John L. Dean, Plaintiff

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SUBMISSION AND SERVICE

I hereby certify that I have this day, 17 February 1995, served copies of this Notice upon all parties to this action by posting same with the U. S. Postal Service to the following counsel of record:

Raymond J. LaJeuness, Jr.
Jocelyn J. Lyman
Ronald T. Schaps
Eugene B. Granof
Lawrence R. Schwerin

at their last known addresses of record.

(S)
John L. Dean

Supreme Court, U.S.
FILED
AUG 8 1996
CLERK

(2)

No. 96-38

In The

Supreme Court of the United States

October Term, 1995

JOHN L. DEAN,

Petitioner,

vs.

TRANS WORLD AIRLINES, INC. AND
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

When the Ninth Circuit (ruling on an open issue of law in the circuit and as to which there is some disagreement between the circuits) reversed the dismissal of TWA as an impermissible "continuation" under the bankruptcy automatic stay, did the Ninth Circuit thereby lose jurisdiction to affirm other portions of the judgments before it which related solely to another party and to the withdrawal of Petitioner's attorneys, none of whom were a "debtor"?

PARTIES TO THE PROCEEDINGS

Respondent Trans World Airlines, Inc. has no parent, subsidiary or affiliate that has issued stock to the public.

The other named Respondent is Air Line Pilots Association International, a labor union.

The Petitioner is John L. Dean, an individual.

The two attorneys formerly representing the Petitioner who were permitted to withdraw are: Jocelyn J. Lyman (then of Olympia, Washington) and Raymond J. LaJeunesse, Jr. (then of Washington, D.C.).

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BRIEF IN OPPOSITION

Respondent Trans World Airlines, Inc. ("TWA") respectfully requests the Court to deny the Petition for Writ of Certiorari. TWA would concur in the letter filed by Respondent Air Line Pilots Association, Int'l ("ALPA") but files this brief as a result of the admonition in Supreme Court Rule 15.2:

> . . . In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bear on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition . . .

OPINIONS BELOW

The opinion as to which review is sought is reported at *John L. Dean v. TWA and ALPA*, 72 F.3d 754 (9th Cir. 1995) ("*Dean III*") (A1-A9 of Appendix to Petition)

This same case had previously been before the Ninth Circuit on two occasions and those opinions are at 924 F.2d 805 (9th Cir 1991)("*Dean II*") and 708 F.2d 486 (9th Cir. 1983), *cert. denied*, 464 U.S. 995 ("*Dean I*").

JURISDICTION

The judgment of the Ninth Circuit was entered December 19, 1995. Under FRAP 40(a) a Petition for Rehearing to be timely had to be filed "within 14 days after entry of judgment." On the fourteenth day after entry of judgment Petitioner ("Dean") *mailed* a petition for rehearing to the clerk of the Ninth Circuit. That petition for rehearing was denied January 31, 1996. Dean initially filed a Petition for Writ of Certiorari by mail on April 26, 1996, which did not comply with this Court's Rule 33.1. By letter dated May 2, 1996, the Clerk gave Dean 60 days in which to file a complying Petition. Dean refiled his Petition by mail on June 28, 1996.

Assuming Dean's Petition for Rehearing was timely filed, this Court would have jurisdiction pursuant to 28 U.S.C. § 2101(c).

STATEMENT OF THE CASE

The collective bargaining agreement between TWA and ALPA contained an agency shop clause, which was applicable to Dean and which required Dean, as a condition of continued employment, to pay a service charge to ALPA.

As became known to TWA only during the course of this litigation, Dean had a dispute with ALPA concerning the amount of the service charge. At the time, however, as Dean's own testimony at trial established, Dean did everything he could to keep the existence of this dispute from TWA, and was successful in doing so. On July 29,

1977, TWA received proper certification from ALPA under the collective bargaining agreement, certifying that Dean was delinquent in his service charges and requesting his discharge in accordance with that collective bargaining agreement. TWA then followed the collective bargaining procedures, which resulted in Dean's discharge on August 12, 1977.

Dean has not disputed that he, as a result of his dispute with ALPA (undisclosed to TWA), had unilaterally decided to simply reduce his payment to $10.00 per month, without seeking either an administrative or judicial resolution of his dispute with ALPA.

Dean then commenced this action in 1978. In 1982, the district court entered a partial summary judgment directing TWA to reinstate Dean. This partial summary judgment was subsequently reversed by the Ninth Circuit in *Dean I*, where that court stated:

> If courts cannot enjoin the collection of union dues, then certainly an individual should not be permitted unilaterally to decide to reduce or stop dues payment. Yet the district court in the instant case in essence approved Dean's self-help injunction. Under *Street* and *Allen*, it would have been appropriate for Dean to seek judicial relief by way of either (1) a rebate for political and ideological expenditures or (2) a narrowly drawn injunction prohibiting the use of a portion of his dues for political and ideological expenditures. [citations deleted] Under *Allen*, the union would have had the burden of proving the proportion of political to total union expenditures. [citation deleted] Dean did not pursue the proper avenue for redress of his

> grievance. The district court erred, therefore, when it granted summary judgment in his favor.

708 F.2d at 488. This Court denied Dean's petition for writ for certiorari. 464 U.S. 995.

In the meantime, TWA did in fact reinstate Dean on May 26, 1982. In September, 1982, Dean bid for and was awarded flights in October, 1982, but Dean failed to appear for and perform his flight duties – because, as it turned out, Dean was incarcerated in a federal penitentiary serving a one year sentence. After investigation, TWA discharged Dean again effective December 8, 1982.[1] (*Dean II*, 924 F.2d at 812.)

On remand from *Dean I*, the district court awarded partial summary judgment that in the event Dean was to prevail on the merits (i.e., on liability) that any relief to be granted to Dean *in this action* would not include back pay after May 26, 1982 and would not include a second reinstatement – that the merits of Dean's second termination were not a part of this lawsuit. (*Dean II*, 924 F.2d at 812.)

The matter then proceeded to trial and the district court, *with the concurrence of all of the parties (including Dean who was represented by counsel)*, instructed the jury that they had to judge the liability of TWA and ALPA separately and independently:

> Although there is more than one defendant in this action, it does not follow that if one is liable, both are liable. Each defendant is entitled to a fair consideration of the defendant's own

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[1] Dean's 1982 termination is still pending before the System Board of Adjustment.

> defense, and it is not to be prejudiced by the fact, if it should become a fact, that you find against another. Unless otherwise stated, all instructions given apply to the case against each defendant.

(Instruction No. 11) and also instructed the jury as to TWA:

> An employer may not be found liable for an employee's discharge pursuant to a union security agreement, unless the employer is aware, prior to the discharge of the employee, of facts that would lead it to believe that the discharge is for an improper purpose.

(Instruction No. 15).

The Verdict Form submitted to the jury and the jury's response as to TWA was:

> Question No. 5: If you found in favor of plaintiff against ALPA in Question No. 4, did TWA have knowledge of facts, prior to terminating Dean, that would lead it to believe that the request for discharge made by ALPA was unlawful?
>
> ANSWER: NO (Yes or No)
>
> Question No. 6: With respect to plaintiff's claim for wrongful termination against Defendant TWA, check one of the following:
>
> ___ We the jury find in favor of plaintiff Dean against defendant TWA.
>
> X We the jury find in favor of defendant TWA.

Judgment was entered July 19, 1985 and stated:

> JUDGMENT IS HEREBY ENTERED IN THE AMOUNT OF $110,000 IN FAVOR OF PLAINTIFF AND AGAINST THE DEFENDANT AIRLINE PILOTS ASSOCIATION AND JUDGMENT ENTERED IN FAVOR OF TRANS WORLD AIRLINES.

On appeal in *Dean II*, Dean (represented by new counsel) did not challenge the jury instructions or the jury verdict of no liability of TWA, and did not question the judgment in favor of TWA except indirectly through a demand that he be awarded a second reinstatement. The *Dean II* appeal, particularly as between Dean and ALPA, was complicated by this Court's intervening decision in *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 106 S. Ct. 1066 (1986) and whether it should be applied retroactively.

The Ninth Circuit in *Dean II*, 924 F. 2d 805 at 812 (9th Cir. 1991), affirmed the district court's ruling that Dean's remedies were limited to back pay up to May 26, 1982, and that Dean had no right to further reinstatement. As to TWA's position on remand, the Ninth Circuit held:

> TWA raises two independent issues on this appeal. TWA first argues Dean is not entitled to any relief against it for breach of the collective bargaining agreement. The jury found in favor of TWA on this claim. Dean has not alleged any errors that could implicate the accuracy of that verdict. There is, therefore, no reason to overturn the jury's verdict that TWA was not liable to Dean for breach of contract.

> TWA also argues that we should hold in its favor on the statutory and constitutional challenges. It claims that this action involves a dispute solely between Dean and ALPA. This argument was not briefed and not considered by the district judge. We will not consider the issue. TWA can make this argument to the district judge on remand.
>
> The district court's order limiting Dean's remedies is affirmed. The jury verdict in favor of TWA is affirmed. In all other respects, the judgment is reversed and remanded for further proceedings.

Dean II, 924 F.2d 805 at 812-813 (9th Cir. 1991).

Upon remand, shortly before the deadline for submitting dispositive motions, Dean's attorneys moved for permission to withdraw. Dean, although engaging in a vicious personal attack on his attorneys (including challenging their competence, honesty, ethics, integrity and emotional stability), asked the district court to require his attorneys to continue to provide him with free legal services. The district court denied the motion, with permission to renew it upon the conclusion of the summary judgment briefings.

Dean's attorneys then filed a motion for summary judgment on issues of liability against both ALPA and TWA; ALPA admitted liability, waived any rights to a new trial and moved to reinstate the jury verdict; and TWA moved for summary judgment of dismissal on the basis that it had no responsibility for ALPA's constitutional liabilities. Dean's attorneys also renewed their motion for permission to withdraw. All of the briefing on

these motions was completed and the matters submitted to Judge Rothstein by early January, 1992.

On January 31, 1992, TWA filed for bankruptcy protection under Chapter 11. Notice of the bankruptcy filing was entered by the district court clerk on February 7, 1992.

Judge Rothstein, by an Order dated February 4, 1992 and entered by the clerk on February 7, 1992,[2] ruled on the motions with the following results:

> 1. Judgment was entered against ALPA for the full amount of Dean's damages as determined by the prior jury verdict;
>
> 2. TWA was dismissed; and
>
> 3. Dean's attorneys were granted permission to withdraw.

Dean appealed from that Order to the Ninth Circuit, which resulted in the opinion which Dean now seeks to have this Court review.

The district court subsequently ruled on a number of motions **brought by Dean** and subsequently entered a supplemental judgment against ALPA imposing prejudgment interest on the amount of Dean's damages from the date of the prior jury verdict.

ALPA promptly paid both judgments against it in full by paying the monies[3] into the court and starting an

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[2] "The parties tell us that the court was not aware of the bankruptcy filing when it issued its order." *Dean III*, 72 F.3d 754 at 755 (9th Cir. 1995)

[3] $143,723.43.

interpleader action between Dean and the Internal Revenue Service. *Air Line Pilots Association v. Dean and United States*, 1993 WL 102852 (W.D. Washington, C92-513R). The Internal Revenue Service was awarded the funds[4] in that interpleader action and Dean appealed that judgment to the Ninth Circuit Court of Appeals, which subsequently dismissed that appeal. *Air Line Pilots Association v. Dean and United States*, 9th Circuit No. 93-35461 (Order dated August 17, 1994).

Dean unsuccessfully sought to commence this litigation all over again before the bankruptcy court, as though no rulings had ever been made or judgments entered or affirmed in this litigation. Instead, by Order dated July 26, 1994, the bankruptcy court lifted all injunctive or stay restrictions relating to this litigation. (A12-A13, Appendix to Petition)

After July 26, 1994, the appeal proceeded before the Ninth Circuit.

The circuits arguably do not agree on the circumstances under which post-filing dismissal of an action against a debtor in bankruptcy is an impermissible "continuance" which violates the automatic stay of 11 U.S.C. § 362(a)(1), although there are very few decisions discussing the issue. *Dennis v. A.H. Robbins Co.*, 860 F.2d 871, 872 (8th Cir. 1988) (per curiam); *Pope v. Manville Forest Prod. Corp.*, 778 F.2d 238 (5th Cir. 1985). The Ninth Circuit had previously ruled that such a dismissal could be permissible in some limited circumstances as long as it was

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[4] The IRS lien was and is significantly in excess of the amount of the judgment.

"consistent with the purpose of the statute." *Independent Union of Flight Attendants v. Pan American World Airways, Inc.*, 966 F.2d 457, 459 (9th Cir. 1992).

Dean raised no issue as to the merits of TWA's dismissal. As to TWA, the only issue tendered to the Ninth Circuit was whether or not the dismissal of TWA under these circumstances was an impermissible continuation. In resolving the issue, the Ninth Circuit **adopted the position urged by Dean** and held that under the circumstances the dismissal was an impermissible continuation and reversed the summary judgment dismissing TWA. (*Dean III*, 72 F.3d at 755-757; A5-A9, Appendix to Petition). No issue is, or could be, raised in Dean's Petition as to this ruling of the Ninth Circuit - the only one as to which there may arguably be some conflict between the circuits.

Dean also raised no issue as to the merits of the judgment entered in his favor against ALPA or the order permitting his attorneys to withdraw. Dean's position was that if the Ninth Circuit reversed the TWA dismissal, that this should retroactively require a FRCP 54(b) certification for the ALPA judgment and the Order permitting withdrawal, and he requested a ruling that the district court violated the stay as to those matters without having entered such a FRCP 54(b) certification.[5] The Ninth Circuit ruled:

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[5] Dean has steadfastly simply refused to acknowledge that the dispute between himself and his attorneys was a collateral matter outside any of the claims in the lawsuit and which did not relate to or involve TWA. The order permitting withdrawal was therefore a final judgment under the Collateral Judgment Rule without regard to any arguments concerning FRCP 54(b) or the stay as to TWA.

> We affirm the other portions of the district court's judgment, in which the court reinstated a judgment against ALPA and allowed Dean's lawyers to withdraw from the case. Dean argues these actions violated the stay. They did not. *United States v. Dos Cabezas Corp.*, 995 F.2d 1486, 1491 (9th Cir. 1993) ("Ordinarily, . . . unless the assets of the bankrupt estate are at stake, the automatic stay does not extend to actions against parties other than the debtor, such as codebtors and sureties.")(citations omitted; listing authorities).

Dean III, 72 F.3d at 755, n. 1; A-5, n. 1.

Cutting through the confusion and excessive verbiage of the Petition, the *entire* crux of Dean's position is that because the Ninth Circuit reversed the dismissal of TWA (as Dean requested) it therefore lost jurisdiction to affirm: the judgment against the non-debtor defendant, ALPA; and the collateral order permitting Dean's attorneys to withdraw – neither of which were subject to any substantive challenge by Dean on the merits.

ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TWA's filing for bankruptcy protection, except for the affects of the automatic stay upon claims against TWA itself, would not effect the district court's continuing jurisdiction over the action.[6] *David v. Hooker, Ltd.*, 560 F.2d 412, 418 (9th Cir. 1977) (automatic stay merely suspends those proceedings to which it applies and does not divest

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[6] There was no attempt to remove this litigation to the bankruptcy court.

the court of jurisdiction); *Donald F. Duncan, Inc. v. Royal Tops Manufacturing Co.*, 381 F.2d 879, 882 (7th Cir. 1967) ("bankruptcy does not divest other courts of jurisdiction over lawsuits involving the bankrupt which are pending at the time the bankruptcy is filed"). We are unaware of any conflict among authorities on that principle.

The automatic stay normally has no affect on non-debtors or proceedings against non-debtors. *United States v. Dos Cabezas Corp.*, 995 F.2d 1486, 1491 (9th Cir. 1993) (unless estate assets are at stake, the automatic stay does not ordinarily extend to action against parties other than the debtor); *Fortier v. Dona Anna Plaza Partners*, 747 F.2d 1324, 1329 (10th Cir. 1984):

> . . . Peterson assumes that an automatic stay under 11 U.S.C. § 362 stays litigation as to co-defendants of the bankrupt. However, the Courts of Appeals have uniformly rejected such an interpretation of the automatic stay provisions of the Bankruptcy Act.

We are unaware of any conflict among the authorities on that principle. Furthermore, we have been unable to find any case where a party has attempted to extend the automatic stay to a purely collateral dispute between a non-debtor party and its counsel and are unable to conceive of any logical basis arguably supporting such an extension.

Where there is a multi-party or multi-claim case and there is a dismissal of a party or claim as a part of a disposition of the entire litigation on the merits, the reversal of that dismissal on appeal does not retroactively make the determination of the other issues non-final so as to deprive the appellate court of jurisdiction. *New Castle*

County v. Hartford Acc. and Indem. Co., 933 F.2d 1162, 1180 (3rd Cir. 1991). There is no reason for a different result here. The Ninth Circuit, in resolving an open issue (on which there is disagreement among the circuits), adopted the position urged by Dean and reversed the dismissal of TWA on the basis that under the circumstances it was an impermissible "continuation." That did not, and should not, deprive the Ninth Circuit of jurisdiction to affirm the district court's other rulings.

A ruling that the Ninth Circuit, by reversing the dismissal of TWA, lost jurisdiction to consider all other aspects of the case would also be inconsistent with other established standards governing review.

> Ordinarily a judgment on fewer than all claims in an action does not terminate that action and thus, is not appealable. *Lockwood v. Wolf Corp.*, 629 F.2d 603, 608 (9th Cir. 1980). An exception exists where "the district court obviously was not trying to adjudicate fewer than all of the pleaded claims." Id. at 608.

Perkins-Elmer Corp. v. Computervision Corp., 680 F.2d 669, 670 (9th Cir. 1982), *cert. denied*, 105 U.S. 187, 460 S. Ct. 857. *See also Westcott v. Impresas Armadoras, S.A. Panama*, 564 F.2d 875, 880-881 (9th Cir. 1977) (doctrine of practical finality).

CONCLUSION

This case is now entering its nineteenth year. Dean's interest is not in the resolution of the litigation but in its continuance – it is his "life."

Dean was awarded his full damages under his claim[7], as determined by a jury, plus pre-judgment interest from the date of the verdict to the date of the judgments against ALPA. Those judgments have been affirmed by the Ninth Circuit.

ALPA has in fact paid those judgments in full, including all post-judgment interest. The proceeds, however, were seized by the Internal Revenue Service under a tax lien against Dean – as the IRS would seize any other proceeds.

There is nothing under Supreme Court Rule 10 to justify the granting of certiorari.

The district court should simply be permitted on remand to take the formal procedural and administrative steps necessary to bring this litigation to a formal closure.

The Petition should be denied.

Dated August 8, 1996.

Respectfully submitted,

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Counsel of Record

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[7] Dean had only *one* claim in this litigation for which he asserted both ALPA and TWA should be liable. Once that claim had been determined, judgment entered against ALPA and the judgment paid by ALPA, there can be no basis for any further or additional claims or requests for relief by Dean against anyone in this litigation.